



January 3, 2001

Mr. Ric Gonzalez
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2001-0014

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142787.

The City of Lewisville (the "city") received a request for offense report number 99-9809.¹ You have submitted for our review the information responsive to the request, and you state that the first three pages of the report have been released to the requestor. You assert that the remaining information in the report, consisting entirely of witness statements, is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

¹The requestor has also requested other information, including copies of 911 tape recordings and specified statements. We rely on the city's representation to this office that the city has released to the requestor the other requested information. Accordingly, this decision addresses only the request for offense report number 99-9809.

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Although you cite to section 552.108(a)(1), you state that the report "is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." We thus understand by your comments that you assert the applicability of section 552.108(a)(2) and not 552.108(a)(1). You also state that "the report is closed." Based on our understanding that the matter has reached a final result other than conviction or deferred adjudication, we find that you have demonstrated the applicability of section 552.108(a)(2) to the information at issue.

Further, although section 552.108(c) provides that "basic information" is not excepted from disclosure by section 552.108, the submitted witness statements are not among the types of information that constitute basic information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information that constitute basic information). We accordingly conclude that the city may withhold the information at issue under section 552.108 of the Government Code.

Because we are able to resolve the matter under section 552.108, we do not address the section 552.101 assertion. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

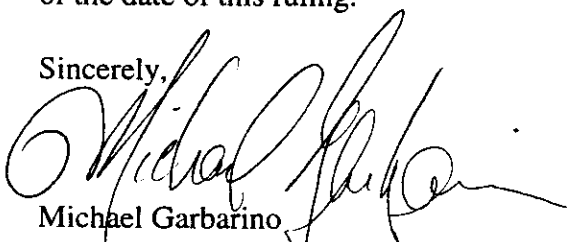
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID#142787

Encl. Submitted documents

cc: Ms. Barbara Wood
1915 Sandylake Road, Box 92
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(w/o enclosures)